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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,625	06/27/2003	Christoph Wolkerstorfer	WOLKERSTORFER 1	7975
7590 05/17/2005				
COLLARD & ROE, P.C. 1077 Northern Boulevard Roslyn, NY 11576		EXAMINER SHARMA, RASHMI K		
		ART UNIT 3651 PAPER NUMBER		

DATE MAILED: 05/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/607,625	<b>Applicant(s)</b> WOLKERSTORFER, CHRISTOPH	
	<b>Examiner</b> Rashmi K. Sharma	<b>Art Unit</b> 3651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 18-21, 24-32 and 36 is/are rejected.
- 7) ☒ Claim(s) 11 and 33 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/27/03</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are replete with instances of a lack of antecedent basis. A few examples are: "the transfer system" in line 5 of claim 1, "the raisable and lowerable brake mechanism" in line 12 of claim 1, "the lifting and lowering action" in lines 12-13 of claim 1, "the feed direction" in line 3 of claim 3, "the other two positioning arms" in the last line of claim 14, "the rotatably mounted positioning mechanism" in lines 2-3 of claim 25 and line 3 of claim 24, "the pivot axis" in line 3 of claim 31, "the crank drive" in lines 3-4 of claim 32. Appropriate correction is required.

Claim 5 recites "a drive system". Is this a new or second drive system in addition to the drive system recited in claim 1? Further clarification is required.

Claim 6 recites "a plurality of conveyor rollers" Are these conveyor rollers in addition to the conveyor roller recited in claim 3? Further clarification is required.

Claims 7-9 recite "the first drive system". Is this an additional drive system different from that recited in claims 1 and 5? Further clarification is required.

Claim 12 recites "the positioning arm" and "the other positioning arm". This terminology is considered to be confusing. It is suggested that "first and second positioning arms" be used. Appropriate correction is required.

Claim 20 recites "the mutually spaced first positioning mechanisms", indicates more than one first positioning mechanism while only one first positioning mechanism has been claimed thus far. Appropriate correction or further clarification is required.

Claim 21 recites "the mutually spaced second positioning mechanisms", indicates more than one second positioning mechanism while only one second positioning mechanism has been claimed thus far. Appropriate correction or further clarification is required.

Claim 22 recites "...sub-...", claim 26, 27, 30 and 36 recite "...-arrow-...". These terms are deemed to be vague and indefinite. Further clarification is required.

Claims 26 and 29 recite the terms "its" and "it", respectively. Appropriate correction is required.

The claims are replete with recitations of referring to a single feature when the claim language has established at least two of those features, such as the positioning mechanisms or the positioning arms. It is suggested to use the terminology "first and second" in referring to these features. Appropriate correction is required.

The term "more steeply aligned" in claim 35 is a relative term which renders the claim indefinite. The term "more steeply aligned" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite

degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-10, 18-21, 24-32 and 36 are rejected under 35 U.S.C. 102(a) as being anticipated by Itoh et al. (JP2002-082137). The U.S. Patent equivalent to JP2002-082137 is U.S. Patent number 6,763,927.

Itoh et al. disclose a transfer system for items conveyed piece by piece between a first conveyor unit (32) and at least one other conveyor unit (33) extending transversely or at an angle thereto, whereby the conveyed items can be fed on a substantially horizontal conveyor plane, which conveyor plane is defined either by at least two conveyor elements (34) of a first conveyor (32) spanning the transfer system or by separate conveyor elements (7, 34) of a first conveyor unit disposed directly on the transfer system, characterized in that a brake mechanism (1) is provided which can be raised above and lowered below the conveyor plane so that it can be selectively placed in and out of friction contact with the bottom face of the conveyed item as well as a lifting and conveying mechanism (12), the conveyor elements (7) of which can be raised and lowered so that the conveyed item can be picked up from the first conveyor

(32) unit and transferred onto one of the other conveyor units (33) without jamming, whereby a first positioning mechanism (25) for the raisable and lowerable brake mechanism (1) and a second positioning mechanism (3) for the lifting and lowering action of the lifting and conveying mechanism (12) are mechanically coupled in displacement and are linked to one another by a common first drive system (5), the first conveyor unit (32) in the conveyor plane has mutually spaced circulating conveyor elements (34) in the form of an endless loop, the conveyor elements (7) of the lifting and conveying mechanism (12) are provided in the form of a plurality of conveyor elements (7, read column 10 lines 8-11), the axes of rotation of which extend parallel with the feed direction of the first conveyor unit (32), conveyor rollers (2) are mounted on a common bearing frame (outer frame of Figure 1 via 30, 31) of the lifting and conveying mechanism (12), a drive system (5) for the conveyor rollers (2) is attached to the bearing frame and is linked via chain or belt drive (4) so as to displace a plurality of conveyor elements (7), a drive system (5) is an electric motor (within roller 2) driving in one direction having a self-inhibiting gear mechanism, a brake motor or a brake hold mechanism (read column 7 lines 51-64 & column 8 lines 1-18) that can be otherwise activated when necessary for the positioning mechanisms (3, 25) of the brake mechanism (1) and the lifting and conveying mechanism (12), the drive system (5) being coupled via a crank drive, push crank, or a connecting drive (4, 20, 22, 23) so as to displace the positioning mechanisms (3, 25), the brake mechanism (1) and the lifting and conveying mechanism (12) are positioned below the conveyor plane when in a non-operating position and are returned to the non-operating position after a complete

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rotation of a crank wheel or a crank arm of the crank or connecting drive (4, 20, 22, 23), whereby the brake mechanism (1) is displaced by the positioning mechanism (3, 25) into an active position above the conveyor plane, being moved in a vertical direction perpendicular to the conveyor plane as well as in the horizontal direction in the feed direction of the first conveyor unit (32), oppositely lying end regions of the brake mechanism (1) cooperates with the first positioning mechanism (25), oppositely lying regions of the bearing frame for the lifting and conveying mechanism (12) cooperate with the second positioning mechanism (3), whereby the first positioning mechanism (25) is coupled in displacement via a dimensionally stable element (8, 26, 27) and coupled via the bearing frame, the brake mechanism (1) and the lifting and conveying mechanism (12) effects a combined vertical and horizontal motion via the rotatably mounted positioning mechanism (3), a stop element (bottom surface of 7) is provided for the conveyed goods, aligned parallel with the feed direction of the lifting and conveying mechanism (12), the stop element disposed in an end region (the top end of 1) of the brake mechanism (1) and is secured to the bearing frame of the lifting and conveying mechanism (12) and projects above the conveyor plane when in the activated position whereby the brake mechanism (1) moves in a direction towards the stop element (bottom surface of 7), an end of a positioning arm (27) of the position mechanism (25) for the brake mechanism (1) spaced at a radial distance apart from the pivot axis can be displaced starting from a first bottom dead center through a top dead center to another bottom dead center and vice versa (read column 9 lines 28-31 and column 10 lines 3-7) and the positioning arm (27) travels across this displacement path

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after a half rotation of the crank drive (4, 20, 22, 23) and lies at the first bottom dead center again after a full rotation of the crank drive (4, 20, 22, 23).

### ***Allowable Subject Matter***

Claims 11 and 33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

Dependent claim 11 recites the structural limitation of the positioning mechanisms having at least one rotatably mounted swing lever, in combination with the rest of the recited structure, clearly defines over the prior art.

Depending claim 33 recites the structural limitation of the positioning arm being coupled via an articulated link so as to displace the brake mechanism, in combination with the rest of the recited structure, clearly defines over the prior art.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rashmi K. Sharma whose telephone number is 571-272-6918. The examiner can normally be reached on Monday-Thursday.



If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kathy Matecki can be reached on 571-272-6951. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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